

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ROSA CANELA, FRANCES CARRILLO,) AU:10-CV-00788-LY
DEIVI CRUZ, MARIA DENOVA,)
SAMUEL GONZALEZ, MARIA MEZA,)
MARTHA AQUINO, MARIA RESENDIZ,)
MARY CARRILLO, MARIBELIA AVILA,)
YESSENIA AVILA, MARIA GUTIERREZ,)
SILVINO GUTIERREZ, JOSE SIMON)
Plaintiffs,)

VS.) AUSTIN, TEXAS

HEB GROCERY COMPANY, LP,)
PASTRANAS PRODUCE, INC.,)
Defendants.) OCTOBER 11, 2011

MARILU FRUCTUOSO, MARGARITA) AU:10-CV-00951-LY
VILLEGAS, OSCAR MURILLO, MARIA)
GARCIA, JOSEFA YANEZ,)
Plaintiffs,)

VS.) AUSTIN, TEXAS

HEB GROCERY COMPANY, LP,)
PASTRANAS PRODUCE, INC.,)
KARL BAYER,)
Defendants.) OCTOBER 11, 2011

MARILU FRUCTUOSO, ROSA CANELA,) AU:11-CV-00557-LY
DEIVI CRUZ, FRANCES CARRILLO,)
Plaintiffs,)

VS.) AUSTIN, TEXAS

HEB GROCERY COMPANY, LP,)
Defendant.) OCTOBER 11, 2011

TRANSCRIPT OF NON-EVIDENTIARY HEARING

BEFORE THE HONORABLE LEE YEAKEL

1 APPEARANCES:

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24 Proceedings recorded by computerized stenography, transcript
25 produced by computer.

08:54:04 1 (Open Court)

09:01:55 2 THE COURT: We are here today on the three cases,
09:02:00 3 *Canela, Fructuoso, and Cruz*. I'll hear announcements from the
09:02:03 4 parties as to who is here and who you represent.

09:02:09 5 MR. SPIVEY: Your Honor, Broadus Spivey and
09:02:15 6 Rhonda Wills for the plaintiffs.

09:02:16 7 THE COURT: Was that a hard question? You kind of
09:02:19 8 stumbled over it a little bit.

09:02:21 9 MR. SPIVEY: I have to take opium.

09:02:24 10 THE COURT: Oh?

09:02:24 11 MR. SPIVEY: But it's opium tincture, because what
09:02:26 12 the doctor did to me, I'm getting kind of cramps. It's not the
09:02:32 13 OU game, though that would give me cramps, too.

09:02:34 14 THE COURT: Well, if there's anything to be said
09:02:37 15 about that, they are really that good. That was not a fluke.

09:02:40 16 MR. FOX: They were pretty powerful.

09:02:43 17 Mike Fox and Courtney Smith for the Defendant HEB.

09:02:46 18 THE COURT: Thank you.

09:02:46 19 MR. LATIMER: Good morning, Your Honor.
09:02:48 20 Michael Latimer for Defendant Pastranas Produce, Inc.

09:02:51 21 THE COURT: Very good. Well, what we're here this
09:02:53 22 morning for in the three cases that I announced is a fairness
09:02:57 23 hearing. My understanding is that the parties have settled the
09:03:01 24 three cases. I have been provided with a copy of a document
09:03:04 25 called Final Settlement Term Sheet that I have reviewed. So I

09:03:10 1 will start with whichever one of you, be it the plaintiff or
09:03:14 2 the defendants, want to tell me a little bit about it or make
09:03:19 3 whatever presentation you want to, you may proceed at this
09:03:23 4 time.

09:03:23 5 Ms. Wills?

09:03:24 6 MS. WILLS: Good morning, Your Honor. Rhonda Wills
09:03:26 7 on behalf of the plaintiffs. We did enter into -- we have
09:03:36 8 reached a settlement, Your Honor; that is, after conducting
09:03:38 9 three mediations of this matter -- or these matters, rather,
09:03:41 10 utilizing two separate mediators.

09:03:47 11 This was obviously a hard-fought contest. We
09:03:51 12 represent in total 113 plaintiffs after reaching the settlement
09:03:56 13 agreement through Eric Galton, the mediator who mediated twice
09:04:01 14 with us, met independently for counsel for both sides on
09:04:06 15 multiple occasions, as well as, I understand, meeting with
09:04:08 16 principals of the Defendant HEB, we were able to reach a
09:04:11 17 settlement.

09:04:12 18 We have presented to the defendants this morning --
09:04:17 19 defendant's counsel this morning and are prepared to also
09:04:20 20 submit to the Court for review individual releases that have
09:04:24 21 been signed by each and every one of the 113 plaintiffs that we
09:04:28 22 represent. Our clients, in signing their individual releases,
09:04:34 23 have indicated their agreement to the settlement and their
09:04:41 24 desire that the Court approve this settlement agreement so that
09:04:44 25 they may receive their settlement funds as quickly as possible.

09:04:48 1 In conjunction with this settlement, Your Honor,
09:04:51 2 those who were still performing work at HEB stores have agreed
09:04:55 3 to resign their employment effective immediately. So as of the
09:04:59 4 end of last week, these are folks that no longer have a job.
09:05:04 5 So we would certainly hope to get the settlement approve as
09:05:09 6 quickly as possible. HEB -- or, rather, the defendants have
09:05:12 7 agreed that any settlement funds will be funded within 48
09:05:17 8 hours, hopefully within 24 hours, of the Court approving the
09:05:22 9 settlement agreement.

09:05:22 10 THE COURT: Thank you. Defendant care to add
09:05:24 11 anything to that?

09:05:25 12 MR. FOX: Your Honor, nothing really. The parties
09:05:28 13 have agreed as part of the settlement to submit to the Court a
09:05:32 14 proposed order approving settlement that would also include a
09:05:38 15 finding that HEB is not a joint employer. We're paying a
09:05:43 16 substantial sum of money. We just want to make sure this wraps
09:05:46 17 this one up totally. So we have prepared an order to submit to
09:05:50 18 the Court for approval.

09:05:52 19 THE COURT: Let me -- and you may be seated. In
09:05:54 20 reviewing the final settlement term sheet that I referenced
09:06:00 21 earlier, it appears to me from reviewing that, that you
09:06:05 22 anticipate a more formal settlement agreement at some point; is
09:06:10 23 that correct?

09:06:14 24 MS. WILLS: Actually, Your Honor, what we anticipated
09:06:19 25 were individual releases to be signed by the plaintiffs so that

09:06:24 1 we would have their agreement to the terms of the settlement.
09:06:28 2 So what we have obtained and sitting here before the Court are
09:06:31 3 individual releases that were signed by each of the plaintiffs
09:06:36 4 and opt-ins that joined into the case. So each and every
09:06:40 5 person who has a claim in the lawsuit has filed an individual
09:06:42 6 release acknowledging the terms of the settlement and
09:06:47 7 acknowledging the amount of the settlement and accepting those
09:06:51 8 terms.

09:06:52 9 THE COURT: So the term sheet provisions in
09:06:56 10 paragraph 7 that recite: Parties agree to request an in-camera
09:07:01 11 inspection of the settlement agreement and, to the extent
09:07:05 12 permitted, no copy of the final agreement shall be filed. And
09:07:08 13 then over on page 3 under the general heading Formal Settlement
09:07:13 14 Agreement, paragraph 15 that indicates: This term sheet is
09:07:16 15 intended by the parties to binding on them until superceded by
09:07:22 16 a formally executed settlement agreement which will include
09:07:25 17 other standard terms and conditions, et cetera, I can ignore
09:07:28 18 that because it is your intent that the term sheet that I have
09:07:32 19 read from and the releases will constitute the full and final
09:07:38 20 settlement agreement of all of the parties; is that correct?

09:07:42 21 MS. WILLS: That is correct, Your Honor, except we do
09:07:44 22 have a supplement to the term sheet that sets forth the timing
09:07:49 23 by which the settlement funds will be paid. And it also
09:07:52 24 incorporates the form for the individual releases that have
09:07:55 25 been signed by each of the plaintiffs.

09:07:57 1 THE COURT: All right. The defendants are in
09:07:58 2 agreement?

09:07:59 3 MR. FOX: It has no other substantive terms other
09:08:01 4 than that, Your Honor.

09:08:02 5 THE COURT: All right. Well, that clears up all of
09:08:04 6 the questions -- well, I did have one other question about your
09:08:09 7 agreement. In the exhibit which indicates the net to be paid
09:08:18 8 to each of the individual plaintiffs, I notice some of the
09:08:20 9 plaintiffs are listed -- have their names listed in italics and
09:08:28 10 others do not. Is there any significance to that?

09:08:32 11 MS. WILLS: Yes, Your Honor. Those that are
09:08:36 12 italicized I believe are the opt-ins.

09:08:38 13 THE COURT: Are the what?

09:08:39 14 MS. WILLS: The opt-ins. And then there are some
09:08:41 15 that have a lighter font, and those are the people that were in
09:08:45 16 the Fructuoso matter.

09:08:47 17 THE COURT: I thought there was probably a lighter
09:08:48 18 font, but I couldn't tell from the copy I had because that kind
09:08:51 19 of washed out. And in the columns where you say Settlement
09:08:54 20 Offer, was that the plaintiffs' offer to defendants and then
09:08:57 21 the net to plaintiffs is what you agreed on?

09:09:00 22 MS. WILLS: Your Honor, the settlement offer is the
09:09:02 23 amount that was offered by the defendants to the plaintiffs.
09:09:07 24 And the net is the amount of the check that each of the
09:09:09 25 plaintiffs will receive after all other amounts for attorney's

09:09:13 1 fees and expenses have been deducted. So the number that's in
09:09:17 2 bold is the actual check that each of these plaintiffs will
09:09:20 3 receive in hand.

09:09:22 4 THE COURT: All right. Let me, if I could, see a
09:09:24 5 copy of the supplement and just a representative sample of one
09:09:30 6 of the releases that you indicate the 113 individual plaintiffs
09:09:35 7 have signed. I presume the releases that were signed are all
09:09:40 8 the same?

09:09:41 9 MR. FOX: Yes, they are, Your Honor. It's here as an
09:09:44 10 exhibit to that.

09:09:45 11 THE COURT: All right. Thank you. I don't need the
09:09:49 12 whole of them.

09:09:51 13 MS. WILLS: I'll just pull out one, then, Your Honor.

09:10:06 14 THE COURT: If you would give me a minute.

09:10:08 15 (Reviews document)

09:12:50 16 THE COURT: The Settlement Agreement to Supplemental
09:12:54 17 Agreement to Term Sheet, which you passed up that I've
09:12:58 18 reviewed -- of course, is a copy of it -- I want the record to
09:13:03 19 be clear has that net fully -- is there a fully signed original
09:13:10 20 of that document with all of the signatures as required on
09:13:14 21 pages 7 and 8 in existence? So is it your representation to
09:13:22 22 the Court that the Supplemental Agreement to Term Sheet has in
09:13:24 23 fact been approved and signed by all parties?

09:13:25 24 MS. WILLS: Your Honor, with the exception of
09:13:27 25 plaintiff's attorney Arturo Villarreal -- and we can certainly

09:13:30 1 represent to the Court that he agrees to those terms. He's on
09:13:33 2 his way up here to sign it. And he's with us, and he certainly
09:13:36 3 agrees, Your Honor.

09:13:38 4 THE COURT: Mr. Fox?

09:13:39 5 MR. FOX: Your Honor, I think Mr. Latimer --
09:13:40 6 Pastranas is actually not a party to that particular agreement,
09:13:43 7 even though there's a signature line on there. That was by
09:13:46 8 mistake. But it is the -- it is signed by HEB and by
09:13:50 9 plaintiffs' counsel, with the exception of Mr. Villarreal.

09:13:52 10 THE COURT: And what is the status of Pastranas? Are
09:13:58 11 they not going to be a party to the settlement?

09:14:00 12 MR. FOX: No. They will be resolved. They just
09:14:03 13 didn't -- weren't a participant at this particular part of the
09:14:06 14 proceeding. But the whole case is being dismissed, and there
09:14:12 15 are issues to be worked out between Pastranas and HEB.

09:14:16 16 THE COURT: All right. And it's your anticipation
09:14:19 17 and what you request the Court to do is to sign the approval of
09:14:25 18 the -- or order granting approval of settlement today, and then
09:14:30 19 is it your request that I also sign dismissal orders today or
09:14:35 20 after the funds are actually exchanged?

09:14:37 21 MR. FOX: After -- what we agreed to, Your Honor, was
09:14:40 22 after the Court signed -- assuming the Court did sign the order
09:14:43 23 of approval and then fund, and then we will submit the orders
09:14:47 24 to dismiss the three cases hopefully sometime this week.

09:14:50 25 THE COURT: Ms. Wills, do you concur?

09:14:54 1 MS. WILLS: We do, Your Honor. Our understanding is
09:14:56 2 that the funds under this supplemental agreement will be
09:15:00 3 tendered to us within 48 hours.

09:15:03 4 THE COURT: That's what it appears. Do you have a
09:15:06 5 clean copy of the proposed order granting approval to
09:15:12 6 settlement that you asked for to sign.

09:15:15 7 MR. FOX: I do Your Honor.

09:15:16 8 THE COURT: The one I'm looking at has Exhibit B on
09:15:19 9 it. All right. Does anybody else have anything that they
09:15:23 10 desire to say at this point?

09:15:26 11 (No response)

09:15:27 12 THE COURT: All right. Well, the Court has reviewed
09:15:30 13 the Final Settlement Term Sheet and the Supplemental Agreement
09:15:36 14 to the Term Sheet that was provided. And I note in reviewing
09:15:42 15 those documents that the confidential releases have been
09:15:49 16 submitted to all of the 113 plaintiffs. And relying on the
09:15:58 17 representations of counsel that the plaintiffs have each signed
09:16:04 18 a confidential release, I hold that I have before me everything
09:16:10 19 that I need to see in order to rule on the question of
09:16:13 20 fairness.

09:16:14 21 I do note that there were two different forms of
09:16:16 22 confidential release. I presume the one that has the reference
09:16:20 23 to the Texas Workforce Commission and the Equal Opportunity
09:16:27 24 Commission is for the members of the 113 plaintiffs who had
09:16:33 25 filed complaints to sign and the ones without that line which

09:16:38 1 pertain to those who did not have a pending complaint; is that
09:16:42 2 correct?

09:16:43 3 MS. WILLS: That's correct, Your Honor.

09:16:44 4 THE COURT: Well, I find the settlement reasonable.
09:16:48 5 I have carefully reviewed the proposed pay-out, and find that
09:16:58 6 it is indeed the rare case where plaintiffs appear to be
09:17:06 7 getting substantial amounts of money in cases like this. I do
09:17:10 8 find, because I have done the math on it, that the attorneys'
09:17:15 9 fee and expenses of the lawyers for the plaintiffs are
09:17:20 10 reasonable, and I need not -- and you need not file with me any
09:17:27 11 additional information on your attorneys' fees.

09:17:31 12 Mr. Fox, that has all been agreed upon; is that
09:17:35 13 correct?

09:17:35 14 MR. FOX: That is correct, Your Honor.

09:17:36 15 THE COURT: All right. Well, having reviewed those
09:17:38 16 documents and made those findings, I do find that the terms of
09:17:42 17 the settlement in this matter are fair and reasonable in all
09:17:46 18 respects, and I further find that it would be appropriate for
09:17:51 19 me to sign the order to that effect at this time in order that
09:17:54 20 the funds may be distributed to the 113 named plaintiffs as
09:18:00 21 quickly as possible. You can go ahead and hold up on the
09:18:08 22 attorneys' fees if you want to, Mr. Fox.

09:18:12 23 MR. SPIVEY: To which the plaintiffs object.

09:18:14 24 THE COURT: I think they can survive a little longer.
09:18:17 25 But I have -- let me return to you -- the

09:18:21 1 supplemental agreement form you gave me will go to Mr. Fox, and
09:18:26 2 this release form will go back to Ms. Wills. And I have today
09:18:30 3 signed an order granting approval of the settlement in the form
09:18:34 4 provided to me. Ms. Jones, you may file that accordingly.

09:18:39 5 And then I presume that you will just provide to us
09:18:46 6 the proposed dismissal orders in the form that was included on
09:18:51 7 the supplement when you are satisfied that the funds have been
09:18:54 8 received that are subject to the settlement.

09:18:56 9 MR. FOX: That's correct, Your Honor.

09:18:58 10 MS. WILLS: That's correct, Your Honor.

09:18:59 11 THE COURT: Is there anything else that anyone else
09:19:01 12 has?

09:19:02 13 MR. FOX: Nothing from us, Your Honor.

09:19:03 14 MS. WILLS: Nothing from us, Your Honor.

09:19:05 15 THE COURT: Well, I want to thank you for your work
09:19:07 16 on this case, and I know it was hard work. I will admit I was
09:19:13 17 skeptical as to whether all three of these cases could get
09:19:18 18 wrapped up and settled, although I do think they -- if they
09:19:24 19 were going to be settled, it ought to be a package of all three
09:19:28 20 of them. And if they were going to be tried, we probably
09:19:30 21 should try all of them.

09:19:32 22 I appreciate your hard work on them. I know it was
09:19:34 23 difficult. But I think you reached a fair and just resolution
09:19:38 24 of everything, and I appreciate your work in this Court.

09:19:41 25 I will be here tomorrow doing sentencings, if anybody

09:19:45 1 would like to drop by and pick up a Court appointment, because
09:19:48 2 now that you're clear of this case, I feel certain y'all have
09:19:53 3 free time on your hands and I could help you supplement your
09:19:57 4 income for maybe a year, if you like.

09:19:59 5 If I don't see you tomorrow, then I will just look
09:20:01 6 for the proposed orders to come in the form that I previously
09:20:07 7 reviewed. So if there is nothing else, thank you for your time
09:20:10 8 and your hard work and the Court's in recess.

09:20:13 9 (End of transcript)

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1 **UNITED STATES DISTRICT COURT)**

2 **WESTERN DISTRICT OF TEXAS)**

3 I, Arlinda Rodriguez, Official Court Reporter, United
4 States District Court, Western District of Texas, do certify
5 that the foregoing is a correct transcript from the record of
6 proceedings in the above-entitled matter.

7 I certify that the transcript fees and format comply with
8 those prescribed by the Court and Judicial Conference of the
9 United States

10 WITNESS MY OFFICIAL HAND this the 17th day of
11 October 2011.

12

13 /S/ Arlinda Rodriguez
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